



DAC/AF JPW

**RESPONSE UNDER 37 CFR 1.116
EXPEDITED PROCEDURE
EXAMINING GROUP 3641**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor : Mitchell R. Swartz
Serial no. 09/ 750,765
Filed: 12/28/00
For: **METHOD AND APPARATUS
TO CONTROL ISOTOPIC FUEL
LOADED WITHIN A MATERIAL**
This is a continuation of Serial no. 07/ 760,970
Filed: 09/17/1991

Group Art Unit: 3641
Examiner: Mr. Palabrica, R.J.

The Commissioner for Patents
Alexandria, VA 22313-1450

May 25, 2006

**PETITION TO THE COMMISSIONER
PURSUANT TO 37 C.F.R. 1.181**

1. This Petition is made pursuant to 37 C.F.R. 1.181 to the Commissioner of Patents, and is made to invoke his supervisory authority to correct a wrongful situation involving a Denial of a Petition by the Applicant [Exhibit "A"; hereinafter simply 'Decison'], just received and dated 5/22/06. Pursuant to 37 C.F.R. 1.181, there is no fee. This Petition is reasonable based upon the reasons stated below, and the facts as discussed in the Declaration supporting this Petition.

2. In the discussion below, reference is made to Declaration of Dr. Mitchell Swartz (hereinafter called the "Swartz Declaration") dated May 25, 2006.

3. The Decision states:

"On October 28, 2003, applicant filed an Appeal Brief. On December 30, 2003, a Notice of Non-Compliance with 37 CFR I . I 92(c) was mailed to the applicant. The Notice indicated that: the status of the claims was inconsistent, the status of the amendments was confusing, the summary of the invention was improper, the scope of the issues was improper, the grouping of claims was improper, the arguments section was improper, the listing of the claims in Appendix A was incorrect and the purpose of Appendix B was unclear. A detailed discussion of these issues can be found in the Notice. Applicant was given a one-month extendable time period to correct the defects. ... the second Appeal Brief filed was again non-compliant as addressed in the Notice of non-Compliance dated March 31, 2004. "

This statement in the Decision is not accurate. First, there were no deficiencies as the Office purports. The Appellant has already addressed this. As stated in the Swartz Declaration,

"2. The Decision is not accurate in that there were no deficiencies as the Office purports. I have already addressed this including in my missive "Appellant's Notice to the Board", dated Nov, 18, 2003."

As stated and proven in "Appellant's Notice to the Board", dated Nov, 18, 2003, and as confirmed by the record,

"The Office is wrong for at least six reasons. First, Appellant respectfully disputes this because there are no "deficiencies". Second, Appellant respectfully disputes this because Applicant did NOT fail to correct them.

Third, Appellant respectfully disputes this because the Office is nonspecific, consistent with confabulation (vide supra, vide infra).

Fourth, Appellant respectfully disputes this because this was discussed on pages 2 though 5 of said Notice.

Fifth, Appellant already made changes because the Office demanded it in the previous first Communication, as discussed above. Appellant took the time and money to make new briefs in triplicate.

Sixth, Appellant respectfully disputes this because NONE of this has been addressed by the Office in said "Notice of Compliance by Appellant", dated Sept. 17, 2003, pages 2 though 5."

["Appellant's Notice to the Board", dated Nov, 18, 2003]

4. The Decision states:

"A review of this part of the Brief, however, failed to reveal any argument with respect to these claims or separate arguments for each claim as appellant identified that the appealed claims do not stand or fall together. Additionally, a review of the Brief section with respect to the rejections under 35 USC 101, 112 and 102 failed to reveal any argument with respect to this issue raised by the examiner wherein each claim must be separately argued since appellant indicated that the claims do not stand or fall together."

This statement in the Decision is not accurate. All claims were discussed in each of the relevant sections of 112 first and second paragraph, 102 and 101, and were explicitly discussed in detail in each of the Appeal Briefs with respect to each and every one of the Examiner's rejections, and further organized with respect to each and every issue which the Examiner brought up with respect to each claim the Examiner cited in each rejection, and as such the Appeal Briefs, did, and do, comply with 37 CFR 1.192(c) as will be now demonstrated. As stated in the Swartz Declaration,

"3. The Decision is not accurate in that all claims were discussed to the best of my *pro se* ability in each of the relevant sections of 112 first and second paragraph, 102 and 101, and were explicitly discussed in detail in each of the Appeal Briefs with respect to each and every one of the Examiner's rejections, and further organized with respect to each and every issue which the Examiner brought up with respect to each claim the Examiner cited in each rejection."

5. In the Appeal Brief of January 4, 2004, despite the above disingenuous statement in the Decision, all claims were explicitly discussed in detail and do comply with 37 CFR 1.192(c) as will be now demonstrated. Perhaps the Office has the noted the following inadvertently or unintentionally.

6. In the Appeal Brief of January 4, 2004, regarding 35 USC 112, first paragraph, Claims 1-10, 12-19, 21, and 22 were explicitly mentioned and fully discussed on pages 21 through 68, and on pages 68 through 69, and on pages 70 through 84, and on pages 86 through 87, and on pages 88 through 91 of the Argument section.

In addition, further discussion of the independent claims was made on page 21 through 22. All claims were explicitly cited on pages 21 and 91.

Attention is directed to the fact that these are ALL CLAIMS which were rejected, and that each of the rejected claims was fully argued with respect to each and every issue raised by the examiner with respect to the Examiner's arguments of

each cited claim. This was done in an organized manner for judicial economy and to maximize clarity for the Board.

This was consistent with 37 CFR 1.192(c). This was consistent with MPEP 1206 which states: "**An exception to the requirement that all the items specified in 37 CFR 1.192(c) be included in the brief is made if the application or reexamination proceeding is being prosecuted by the appellant *pro se***". This was also consistent with the fact that the U.S. Supreme Court has ruled that any *pro se* litigant is entitled to less stringent standards [U.S. Rep volume 404, pages 520-521 (72)].

7. In the Appeal Brief of January 4, 2004, regarding 35 USC 112, second paragraph, Claims 1-10, 12-19, 21, and 22 were explicitly mentioned and fully discussed on pages 92 through 95 of the Argument section. Claims 1, 10, and 21 for which a separate argument was given by the Examiner were discussed separately on pages 93 through 94 of the Argument section.

In addition, further discussion of the independent claims was made on page 92.

Attention is directed to the fact that these are ALL CLAIMS which were rejected, and that each of the rejected claims was fully argued with respect to each and every issue raised by the examiner with respect to the Examiner's arguments of each cited claim. This was done in an organized manner for judicial economy and to maximize clarity for the Board.

This was consistent with 37 CFR 1.192(c). This was consistent with MPEP 1206 which states: "**An exception to the requirement that all the items specified in 37 CFR 1.192(c) be included in the brief is made if the application or reexamination proceeding is being prosecuted by the appellant *pro se***". This was also consistent with the fact that the U.S. Supreme Court has ruled that any *pro se* litigant is entitled to less stringent standards [U.S. Rep volume 404, pages 520-521 (72)].

8. In the Appeal Brief of January 4, 2004, regarding 35 USC 102,

Claims 1-10, 12-19, 21, 22 were explicitly mentioned and fully discussed on pages 100 and 101 of the Argument section..

Claims 1-10, 12-19, and 21-22 were explicitly mentioned and fully discussed on pages 101 through 112 of the Argument section.

Claims 1, 2, 4, 5, 7, 10, 13, 15, 16 were explicitly mentioned and fully discussed on pages 110 through 117 of the Argument section.

Claims 1-8 and 13-16 were explicitly mentioned and fully discussed on pages 113 through 120 of the Argument section.

In addition, further discussion of the independent claims was made on page 100. All claims were explicitly cited and discussed on pages 100, 101, and 129-130.

Attention is directed to the fact that these are ALL CLAIMS which were rejected, and that each of the rejected claims was fully argued with respect to each and every issue raised by the examiner with respect to the Examiner's arguments of each cited claim. This was done in an organized manner for judicial economy and to maximize clarity for the Board.

This was consistent with 37 CFR 1.192(c). This was consistent with MPEP 1206 which states: "**An exception to the requirement that all the items specified in 37 CFR 1.192(c) be included in the brief is made if the application or reexamination proceeding is being prosecuted by the appellant *pro se***". This was also consistent with the fact that the U.S. Supreme Court has ruled that any *pro se* litigant is entitled to less stringent standards [U.S. Rep volume 404, pages 520-521 (72)].

9. In the Appeal Brief of January 4, 2004, regarding 35 USC 101, Claims 1-10, 12-19, 21, and 22 were explicitly mentioned and fully discussed on pages 131 through 142 of the Argument section.

In addition, further discussion of the independent claims was made on page 131. Attention is directed to the fact that these are ALL CLAIMS which were rejected, and that each of the rejected claims was fully argued with respect to each and every issue raised by the examiner with respect to the Examiner's arguments of each cited claim. This was done in an organized manner for judicial economy and to maximize clarity for the Board.

This was consistent with 37 CFR 1.192(c). This was consistent with MPEP 1206 which states: "**An exception to the requirement that all the items specified in 37 CFR 1.192(c) be included in the brief is made if the application or reexamination proceeding is being prosecuted by the appellant *pro se***". This was also consistent with the fact that the U.S. Supreme Court has ruled that any *pro se* litigant is entitled to less stringent standards [U.S. Rep volume 404, pages 520-521 (72)].

10. In the Appeal Brief of October 24, 2003, despite the above disingenuous statement in the Decision, all claims were explicitly discussed in detail and do comply with 37 CFR 1.192(c) as will be now demonstrated.

In the Appeal Brief of October 24, 2003, regarding 35 USC 101, Claims 1-10, 12-19, 21, and 22 were explicitly mentioned and fully discussed on pages 127 through 137 of the Argument section. Attention is directed to the fact that these are ALL CLAIMS which were rejected, and that each of the rejected claims was fully argued with respect to each and every issue raised by the examiner with respect to the Examiner's arguments of each cited claim. This was done in an organized manner for judicial economy and to maximize clarity for the Board.

This was consistent with 37 CFR 1.192(c). This was consistent with MPEP 1206 which states: "**An exception to the requirement that all the items specified in 37 CFR 1.192(c) be included in the brief is made if the application or reexamination proceeding is being prosecuted by the appellant *pro se***". This was also consistent with the fact that the U.S. Supreme Court has ruled that any *pro se* litigant is entitled to less stringent standards [U.S. Rep volume 404, pages 520-521 (72)].

11. In the Appeal Brief of October 24, 2003, regarding 35 USC 112, first paragraph, Claims 1-10, 12-19, 21, and 22 were explicitly mentioned and fully discussed on pages 22 through 28, and on pages 29 through 61, and on pages 68 through 69, and on pages 70 through 73, and on pages 74 through 77, and on pages 78 through 84, and on pages 86 through 87 of the Argument section. Attention is directed to the fact that these are ALL CLAIMS which were rejected, and that each of the rejected claims was fully argued with respect to each and every issue raised by the examiner with respect to the Examiner's arguments of each cited claim. This was done in an organized manner for judicial economy and to maximize clarity for the Board.

This was consistent with 37 CFR 1.192(c). This was consistent with MPEP 1206 which states: "**An exception to the requirement that all the items specified in 37 CFR 1.192(c) be included in the brief is made if the application or reexamination proceeding is being prosecuted by the appellant *pro se***". This was also consistent with the fact that the U.S. Supreme Court has ruled that any *pro se* litigant is entitled to less stringent standards [U.S. Rep volume 404, pages 520-521 (72)].

12. In the Appeal Brief of October 24, 2003, regarding 35 USC 112, second paragraph, Claims 1-10, 12-19, 21, and 22 were explicitly mentioned and fully discussed on pages 92 through 94 of the Argument section.. Claims 1, 10, and 21 for which a separate argument was given by the Examiner were discussed separately on pages 92 through 95 of the Argument section. Attention is directed to the fact that these are ALL CLAIMS which were rejected, and that each of the rejected claims was fully argued with respect to each and every issue raised by the examiner with respect to the Examiner's arguments of each cited claim. This was done in an organized manner for judicial economy and to maximize clarity for the Board.

This was consistent with 37 CFR 1.192(c). This was consistent with MPEP 1206 which states: "**An exception to the requirement that all the items specified in 37 CFR 1.192(c) be included in the brief is made if the application or reexamination proceeding is being prosecuted by the appellant *pro se***". This was also consistent with the fact that the U.S. Supreme Court has ruled that any *pro se* litigant is entitled to less stringent standards [U.S. Rep volume 404, pages 520-521 (72)].

13. In the Appeal Brief of October 24, 2003, regarding 35 USC 102, Claims 1-10, 12-19, 21, 22 were explicitly mentioned and fully discussed on pages 99 of the Argument section..

Claims 1-10, 12-19, and 21-22 were explicitly mentioned and fully discussed on pages 100 through 110 of the Argument section.

Claims 1, 2, 4, 5, 7, 10, 13, 15, 16 were explicitly mentioned and fully discussed on pages 110 through 117 of the Argument section.

Claims 1-8 and 13-16 were explicitly mentioned and fully discussed on pages 117 through 125 of the Argument section.

Attention is directed to the fact that these are ALL CLAIMS which were rejected, and that each of the rejected claims was fully argued with respect to each and every issue raised by the examiner with respect to the Examiner's arguments of each cited claim. This was done in an organized manner for judicial economy and to maximize clarity for the Board.

This was consistent with 37 CFR 1.192(c). This was consistent with MPEP 1206 which states: "**An exception to the requirement that all the items specified in 37 CFR 1.192(c) be included in the brief is made if the application or reexamination proceeding is being prosecuted by the appellant *pro se***". This was also consistent with the fact that the U.S. Supreme Court has ruled that any *pro se*

litigant is entitled to less stringent standards [U.S. Rep volume 404, pages 520-521 (72)].

14. In summary, Appellant complied with item (8) in each Brief. As stated in the Swartz Declaration,

"4. I have made every attempt to comply with 37 CFR 1.192(c) such that each of the rejected claims was fully argued with respect to each and every issue raised by the examiner with respect to the Examiner's arguments of each cited claim. This was done in an organized manner for judicial economy and to maximize clarity for the Board."

15. In addition MPEP 1206 states: **"An exception to the requirement that all the items specified in 37 CFR 1.192(c) be included in the brief is made if the application or reexamination proceeding is being prosecuted by the appellant *pro se*".**

16. In addition, the U.S. Supreme Court has ruled that any *pro se* litigant is entitled to less stringent standards [U.S. Rep volume 404, pages 520-521 (72)].

17. Thus, the examiner's action of March 31, 2004 was completely in error, and the Decision was in error and should be corrected.

18. President Bush has stated: **"Keeping America competitive requires affordable energy. Here we have a serious problem: America is addicted to oil, which is often imported from unstable parts of the world. The best way to break this addiction is through technology. ... To change how we power our homes and offices, we will invest more in zero-emission coal-fired plants; revolutionary solar and wind technologies; and clean, safe nuclear energy".**

19. Since Appellant first Appeal Brief was filed, there has been a systematic delay to send this to the Board for two years which might be perceived somewhere between an obstruction of justice and egregious lack of ethics with the appearance of impropriety.

20. During said delay, this material was made available to other countries through publication, consistent with possible violations of Title 18 U.S.C., Sections 1831 and 1832, and a usurping of my Constitutionally protected rights.

WHEREFORE, given the evidence in the record, cited in this Petition, and supported by Affidavit, the Applicant respectfully requests relief from this improper action by Mr. Donald T. Hajec, Director. Appellant (previously Applicant) is entitled to transfer of his Appeal Brief to the Board, and failure to do such given the record, and given either MPEP 1206 and/or U.S. Rep volume 404, pages 520-521 (72) will indicate at least the appearance of impropriety and herald an obstruction of justice inconsistent with the Rules of the Patent office, federal law, and the directives of the US Constitution, the US Congress and the President of the United States.

Respectfully submitted,



Mitchell Swartz, ScD, MD, EE
Post Office Box 81135
Wellesley Hills, Mass. 02481

Certificate Of Mailing [37 CFR 1.8(a)]

May 25, 2006

To Whom it Does Concern:

I hereby certify that this correspondence will be deposited with the United States Postal Service by First Class Mail, postage prepaid, in an envelope addressed to

The Commissioner for Patents


Alexandria, VA 22313-14501

on the date below.

Thank you.

Sincerely,

May 25, 2006


M.R. Swartz



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor : Mitchell R. Swartz

Serial no. 09/ 750,765

Filed: 12/28/00

For: **METHOD AND APPARATUS
TO CONTROL ISOTOPIC FUEL
LOADED WITHIN A MATERIAL**

This is a continuation of Serial no. 07/ 760,970

Filed: 09/17/1991

Group Art Unit: 3641

Examiner: Mr. Palabrica, R.J.

The Commissioner for Patents
Alexandria, VA 22313-1450

May 25, 2006

**DECLARATION OF DR. MITCHELL SWARTZ
SUPPORTING PETITION to the COMMISSIONER**

I, Mitchell R. Swartz, declare that I am a citizen of the United States of America and the inventor of the invention described in the above-entitled application.

1. I received the Office's Communication of dated 5/22/06, and it is not accurate and is unfair.

2. The Decision is not accurate in that there were no deficiencies as the Office purports. I have already addressed this including in my missive "Appellant's Notice to the Board", dated Nov, 18, 2003.

3. The Decision is not accurate in that all claims were discussed to the best of my *pro se* ability in each of the relevant sections of 112 first and second paragraph, 102 and 101, and were explicitly discussed in detail in each of the Appeal Briefs with respect to each and every one of the Examiner's rejections, and further organized with respect to each and every issue which the Examiner brought up with respect to each claim the Examiner cited in each rejection.

4. I have made every attempt to comply with 37 CFR 1.192(c) such that each of the rejected claims was fully argued with respect to each and every issue raised by the examiner with respect to the Examiner's arguments of each cited claim. This was done in an organized manner for judicial economy and to maximize clarity for the Board.

5. I do not understand why the Office ignores MPEP 1206 and U.S. Rep volume 404, pages 520-521 (72).

6. It is unfair that since my Appeal Brief was filed, there has been a systematic delay to send this to the Board for two years. My checks were promptly cashed by the Office, and America is at War for energy. The Board remanded my first patent application to the Examiner and since that time, the Examiner and his supervisors have systematically attempted to throw out each and every one of my applications using false statements, false abandonments, and other tactics consistent with an appearance of impropriety.

I declare that all statements herein of my own knowledge are true and that all statements made on information and belief are believed to be true.

Signature of Inventor:

May 25, 2006

A handwritten signature in black ink, appearing to read "Mitchell R. Swartz", is written over a horizontal line.

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UNITED STATES PATENT AND TRADEMARK OFFICE

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FROM DIRECTOR'S OFFICE

MAY 29 2006

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In re Application of
Mitchell R. Swartz
Application No. 09/750,765
Filed: December 28, 2000
For: METHOD AND APPARATUS TO CONTROL
ISOTOPIC FUEL LOADED WITHIN A
MATERIAL

DECISION ON THE PETITION
UNDER 37 CFR 1.181

EXHIBIT "A"

This is a decision on applicant's petitions filed on April 26, 2004 and May 28, 2004 under 37 CFR 1.181, to the Notice of non-Compliant Appeal Brief dated March 31, 2004.

The petition is **DENIED**.

RELEVANT HISTORY

On **September 8, 2003**, applicant filed a Notice of Appeal appealing the final rejection made on March 20, 2003.

On **October 28, 2003**, applicant filed an Appeal Brief.

On **December 30, 2003**, a Notice of Non-Compliance with 37 CFR 1.192(c) was mailed to the applicant. The Notice indicated that: the status of the claims was inconsistent, the status of the amendments was confusing, the summary of the invention was improper, the scope of the issues was improper, the grouping of claims was improper, the arguments section was improper, the listing of the claims in Appendix A was incorrect and the purpose of Appendix B was unclear. A detailed discussion of these issues can be found in the Notice. Applicant was given a one-month extendable time period to correct the defects.

On **January 7, 2004** a second Appeal Brief was filed.

On **March 31, 2004** a letter was mailed to the applicant indicating that the second Appeal Brief remained defective. The letter stated that "applicant states in the grouping of the Claims Section that the 'appealed claims do not stand or fall together.' However, there is still no discussion in the Arguments section of why EACH claim is considered separately patentable." The letter further indicated that: the grouping of the claims was still improper, the rejected claims by the examiner in the Final office action were not the same claims being addressed in the Appeal Brief, Appendix A claim listing was still incorrect and the purpose of Appendix B was still unclear. A detailed discussion of these issues can be found in the Notice.